In the High Court of Punjab and Haryana at Chandigarh

CWP No. 17017 of 2006

Date of decision: 27.10.2006

Raj Kumar Malik

…Petitioner

Versus

State of Haryana and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Sanjeev Kodan, Advocate,

for the petitioner.

JUDGMENT

M.M. KUMAR, J. (Oral)

Challenge in this petition is to the orders and public notices published in the Hindi daily 'Dainik Bhaskar' on 20.7.2006 (P-1) and 10.10.2006 published in the English daily 'The Tribune' (P-2. According to the aforementioned public notices, respondent No. 2 i.e. Haryana Staff Selection Commission has cancelled the written examination held on 9.7.2006 at various centres for filling up posts of Taxation Inspectors, which were advertised vide Advertisement No. 2/2006, Category No. 19. The reason recorded in the public notice dated 20.7.2006 is that the Commission had received several complaints/reports with regard to mal-practice and cheating committed in the written examination held on 9.7.2006 at various

examination centres. According to the public notice dated 10.10.2006, the Commission has notified that the written examination is to be held again at Ambala and Karnal on 29.10.2006 from 10.00 a.m. to 11.45 a.m. in various educational institutions and has also issued further instructions.

The grievance of the petitioner is that the aforementioned reasons are not sufficient for cancellation of the written test as the petitioner has done extremely well in the written test. According to the learned counsel such a procedure cannot be adopted by the Commission and the cancellation of the written test is wholly arbitrary.

Having heard the learned counsel at some length we are of the view that no interference of this court would be warranted because once the sanctity of an examination is vitiated by virtue of use of mal-practices and cheating as per the conclusion reached by the Commission then it would be wholly unfair for any candidate to make a grievance that the cancellation of the written test is arbitrary or violates Article 14 of the Constitution. It is well settled that in cases where there is mass mal-practice and cheating committed by the examinees then even the principles of natural justice are not required to be followed by affording opportunity of hearing to such examinees. The Commission was competent to take a decision as to whether sanctity of such an examination has been vitiated by use of mal-practices. In that regard reliance could be placed on the observations made by Hon'ble the Supreme Court in the case of **Bihar School Examination Board v. Subhas Chandra Sinha, (1970) 1 SCC 648**,

which reads as under:

> "13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

The aforementioned proposition has again been followed by Hon'ble the Supreme Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi, (1991) 2 SCC 716** and it has been observed as under:-

> " 22. From this perspective, the question is whether omission to record reasons vitiates the impugned

order or is in violation of the principles of natural justice. The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances."

Again their Lordships' have taken the same view in the case of **Chairman J&K State Board of Education v. Feyaz Ahmed Malik, (2000) 3 SCC 59**.

Moreover, the Commission has decided to hold the test again and the petitioner has been permitted to appear in the test, which is scheduled to be held on 29.10.2006. Therefore, there is no illegality in the order of cancellation of the written examination. The writ petition is wholly without merit. Accordingly, the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

October 27, 2006

Pkapoor